

# You may be an employer with requirements—and not know it.

Ask yourself these three questions. They will help you understand your requirements.



Do they bring more than their personal labor to the job?



Are they working without your supervision?



Do they have an established, independent business?



# Are you an employer?

## Do you always know what your responsibilities are for the people you hire?

If they are “employees,” they have certain rights under the law. Specifically, you — the employer — must usually:

- ▶ Pay workers’ compensation
- ▶ Meet wage and hour requirements
- ▶ Pay unemployment tax
- ▶ Maintain a safe workplace

## But what’s the definition of an employee?

In some cases, a self-proclaimed “independent contractor” is actually a worker who has at least some of these protections under the law.

Not understanding your requirements can leave your business vulnerable to unwanted penalties and even lawsuits from independent contractors and their employees.

To help protect you and your business, ask yourself the three questions in this brochure. As always, if you’re not sure, please call for help. Or you can check one of the many web sites inside this publication.

### **Safety note: Did you know?**

If it’s your job site, you are responsible for the on-site safety of all **employees**, whether they work for you, your contractor, a subcontractor or someone else. See page 6 for details.

Ask yourself:

1

## Are you hiring someone for more than personal labor?

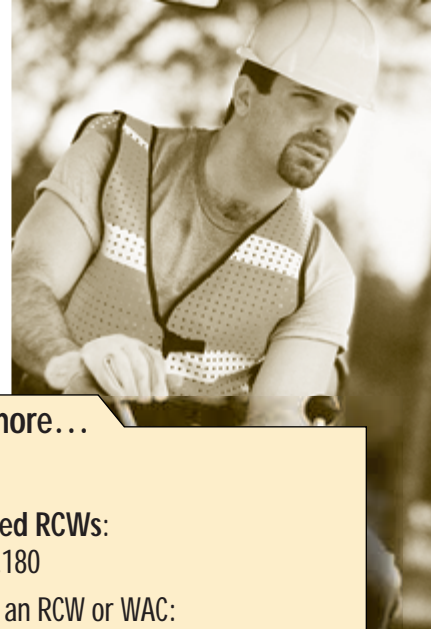
☐ **Are they bringing employees?**

If you are hiring someone who is bringing his/her own employees to perform the work, and **you are not supervising this work** (see page 4), then that person is not your employee.

**Note:** Your subcontractor is responsible for his/her own employees. Make sure he/she is registered as an employer with L&I and is current with premiums. If not, you will be held responsible for unpaid workers' compensation.

☐ **Or... are they bringing heavy equipment?**

If you are hiring someone who brings more than "ordinary hand tools" to the job and you are not supervising the work (see page 4), then he/she is not your employee. Examples of heavy equipment include earth-moving equipment, such as a backhoe or bulldozer, an on-site rain gutter manufacturing machine, a metal lathe, a feller-buncher or a skidder.



**For more...**

**Related RCWs:**  
51.08.180

**Read an RCW or WAC:**  
[www.leg.wa.gov/rcw/](http://www.leg.wa.gov/rcw/)

**Call for assistance:** 360-902-4817

### Your answer?

**Answer "yes" to ONE of the above questions?**

Then, usually:

- No workers' compensation premiums due
- No wage and hour requirements
- No unemployment tax
- Always keep your job site safe

**Answer "no" to BOTH?**

Then, ask yourself the question on the next page.



Ask yourself:

## 2 Are you supervising?

You may be hiring someone who does not bring employees or heavy equipment to the job, but is still not your employee.

The key test is whether or not you are supervising.

- ▶ You ARE NOT supervising if you are only scheduling and inspecting the work.
- ▶ You ARE supervising if you are telling your worker or a subcontractor's workers how to do the job, assigning tasks, training, keeping time sheets, paying a wage or setting regular hours.

Laws addressing the idea of supervision talk about having "direction and control" over the worker or having control of the "means and methods" of the work.

Having a UBI number or a contractor's registration with L&I is NOT enough proof that your workers are unsupervised, independent contractors. If you are supervising, they are your employees.



For more...

Related RCWs:

51.08.180

51.08.195

Read an RCW or WAC:

[www.leg.wa.gov/rcw/](http://www.leg.wa.gov/rcw/)

Call for assistance: 360-902-4817

Your answer?

### Answer "yes" to Question #2?

Then, usually:

Workers' compensation premiums are due

Wage and hour rules apply

Unemployment tax due

Always keep your job site safe

### Answer "no" to Question #2?

Ask yourself the question on the next page.



Ask yourself:

# 3 Do they have an established business of their own?

Are you still unsure about your responsibilities to your worker? You can double-check with the “Six-Part Test” below. It was passed into Washington law in 1991 (RCW 51.08.195). A “yes” answer to all six questions usually means the worker has a business of his/her own, and you are not responsible for workers’ comp premiums, unemployment tax or wage and hour requirements.

1. **Supervision:** Do they perform the work free of your direction and control? (See page 4)
2. **Business office:** Do they maintain and pay for a place of business that is separate from yours? (A cell phone and a truck is not enough.)
3. **Previously established business:** Do they have an established, independent business that existed before you hired? Evidence may include other customers or advertising.
4. **IRS taxes:** When you entered into the contract, was the worker responsible for filing a tax return with the IRS for his or her business?
5. **Required registrations:** Do they have all required registrations, such as a UBI number or a contractor registration number?
6. **Maintains books:** Do they maintain a set of books dedicated to the expenses and earnings of the business?

**Note:** If you plan to treat your worker/subcontractor as an independent, make sure you can prove it. You may always ask the person you are hiring to see the above documents.

For more...

Related RCWs:

51.08.180

51.08.195

Read an RCW or WAC:

[www.leg.wa.gov/rcw/](http://www.leg.wa.gov/rcw/)

Call for assistance:

360-902-4817

Your answer?

**Answer “yes” to ALL SIX questions on this page?**

Then, usually:

No workers’ compensation premiums due

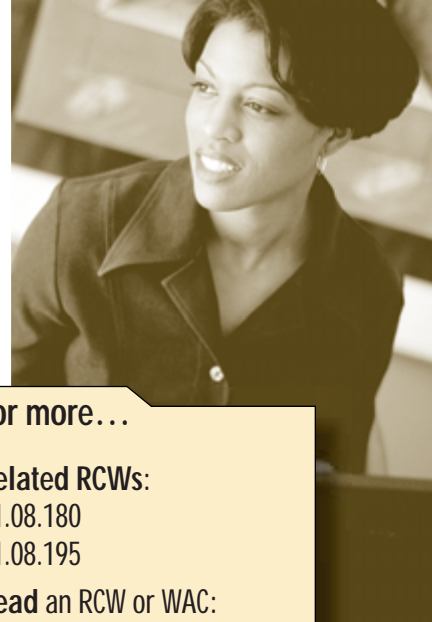
No wage and hour requirements

No unemployment tax

Always keep your job site safe

**Answer “no” to ANY of the six questions on this page?**

Did you also decide on page 3 that the worker was NOT bringing more than personal labor to the job? If so, you usually DO have workers’ comp, wage and hour, unemployment tax and safety responsibilities to the worker(s) you are hiring.





## Your job site must be safe

You are required to keep your job site safe for all **employees**, whether they work for you, your contractor, a subcontractor or someone else.

The definition of “employee” differs among Washington’s safety, industrial insurance and wage and hour laws. For this reason, WISHA (Washington Industrial Safety and Health Act) safety standards **MAY** apply at your work site even when you are not required to pay your workers’ compensation premiums.

**Note:** You may not be technically liable for the safety of some people on your job site because they are not considered **employees** under WISHA. These people include those who are:

- ... on your job site as the supervisor of their own employees, who are doing the work.
- ... doing work that requires a license or certificate giving them legal permission to do the job, such as an electrician or plumber. (A contractor registration is not enough.)
- ... doing work that requires the use of heavy equipment (not vehicles used for transportation) they have provided (not just rented) to the job site.
- ... on the job site, but who are not making the bulk of their profit from their own personal labor. (They may be delivering materials, for example.)

### For more...

#### Related RCWs & WACs:

WISHA: RCW 49.17

WISHA Core Rules:

WAC 296-800-400

#### Read an RCW or WAC:

[www.leg.wa.gov/rcw/](http://www.leg.wa.gov/rcw/)

#### More on workplace safety requirements:

[www.LNI.wa.gov/Safety/KeepSafe/EmployerReq](http://www.LNI.wa.gov/Safety/KeepSafe/EmployerReq)

Or call: 1-800-423-7233  
(1-800-BE-SAFE)

**Still, the best practice is to make sure your job site is safe for everyone.**





## Questions we are often asked

### But he had a contractor's license!

*I subcontracted some work to a guy who has a contractor's registration with L&I. Doesn't that mean he's not my employee?*

Not necessarily. L&I auditors look at "direction and control" and other factors when making this call. If you are supervising or managing a worker's daily tasks, even when he is registered, then this worker is considered your employee (See page 4).

### Can I be sued?

*Someone working on my job site claims he hurt himself because of an unsafe condition. Can he sue me?*

Your **employees** cannot sue you for their work-related injuries. Their only legal remedy is the workers' compensation benefit to which they are entitled. However, **independent contractors and their employees** can sue you if they are hurt as a result of your negligence, or the negligence of one of your employees.

### What are wage and hour requirements?

*I'm paying workers' comp premiums for my five landscape workers. Do I have to meet wage and hour requirements? What are they?*

In general, if you are required to pay workers' compensation premiums, you also are required to meet state wage and hour requirements, which require employers to:

- ☐ Pay minimum wage for all hours worked and overtime for hours over 40 in a work week.
- ☐ Keep accurate payroll records for all hours worked.
- ☐ Provide pay statements.
- ☐ Give rest breaks and meal periods.
- ☐ Obtain a minor work permit and follow minor work regulations for employees under 18.

**Note:** There are some exceptions for "white collar" workers, casual laborers and agricultural workers. In addition, there may be no wage and hour requirements for registered contractors with their own established businesses, even when they are being closely supervised. Call your local L&I office if you have questions.

### Unemployment tax — Washington Employment Security Department

*When do I pay unemployment tax for my workers?*

In general, unemployment tax must be paid to the Washington Employment Security Department when you are required to pay workers' compensation premiums for the worker.

Related RCWs: [fortress.wa.gov/esd/portal/taxes/filetaxes/](http://fortress.wa.gov/esd/portal/taxes/filetaxes/)  
Or call Employment Security: 360-902-9360.



## Still have questions?

- ☐ Check out our web sites:

L&I home page: [www.LNI.wa.gov](http://www.LNI.wa.gov)

Report fraud: [Fraud.LNI.wa.gov](http://Fraud.LNI.wa.gov) (or call 1-888-841-5974)

Register or renew registration/license online: [Licensing.LNI.wa.gov](http://Licensing.LNI.wa.gov)

Look up a contractor: [Contractors.LNI.wa.gov](http://Contractors.LNI.wa.gov)

Pay quarterly premiums online: [QuarterlyReports.LNI.wa.gov](http://QuarterlyReports.LNI.wa.gov)

Check premium status of a business: [PremiumStatus.LNI.wa.gov](http://PremiumStatus.LNI.wa.gov)

Check WISHA safety rules and issues: [SafetyRules.LNI.wa.gov](http://SafetyRules.LNI.wa.gov)

For unemployment tax questions, visit:

Employment Security Department: [fortress.wa.gov/esd/portal](http://fortress.wa.gov/esd/portal)  
(or call 360-902-9360)

- ☐ Visit your local L&I office. For maps and directions visit: [Offices.LNI.wa.gov](http://Offices.LNI.wa.gov)

- ☐ Phone your local L&I office:

<b>Aberdeen</b> .....	360-533-8200	<b>Mount Vernon</b> .....	360-416-3000
<b>Bellevue</b> .....	425-990-1400	<b>Port Angeles</b> .....	360-417-2700
<b>Bellingham</b> .....	360-647-7300	<b>Pullman</b> .....	509-334-5296
<b>Bremerton</b> .....	360-415-4000	<b>Seattle</b> .....	206-515-2800
<b>Colville</b> .....	509-684-7417	<b>Spokane</b> .....	509-324-2600
<b>East Wenatchee</b> .....	509-886-6500	<b>Tacoma</b> .....	253-596-3800
<b>Everett</b> .....	425-290-1300	<b>Tukwila</b> .....	206-835-1000
<b>Kennewick</b> .....	509-735-0100	<b>Tumwater</b> .....	360-902-5799
<b>Longview</b> .....	360-575-6900	<b>Vancouver</b> .....	360-896-2300
<b>Moses Lake</b> .....	509-764-6900	<b>Yakima</b> .....	509-454-3700

This publication is a general guide that explains some of L&I's rules and policies. It is not a legal interpretation, but is intended to help you determine when you are required to pay premiums and unemployment tax for those your hire, as well as when wage and hour and safety requirements apply on the job site. For more specific information, please call us or visit one of our sites.

This document is available in other formats to accommodate persons with disabilities. For assistance, call 1-800-547-8367. (TDD users, please call 360-902-5797.)

